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THE BEHRING SEA QUESTION.

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THE Tribunal of Arbitration now sitting at Paris was appointed under the provisions of a treaty between Great Britain and the United States of America, signed at Washington on the 29th of February, 1892.

The treaty recites that Great Britain and the United States being desirous to provide for an amicable settlement of the questions which have arisen concerning the jurisdictional rights of the United States in the waters of Behring Sea, and concerning also the preservation of the fur seal on or habitually resorting to the said sea, and the rights of the citizens and subjects of either country, as regards the taking of fur seal in or habitually resorting to said waters, have resolved to submit to arbitration the questions involved; and it then provides that the questions shall be submitted to a Tribunal of Arbitration to be composed of seven arbitrators, who shall be appointed in the following manner, viz., two by Her Britannic Majesty, two by the President of the United States, while the President of the French Republic shall be jointly requested to name one, the King of Italy shall be so requested to name one, and the King of Sweden and Norway shall be so requested to name one. The seven arbitrators to be so named shall be jurists of distinguished reputation in their respective countries, and the selecting Powers shall be requested to choose, if possible, jurists who are acquainted with the English language.

The following five points have been submitted to the arbitrators, and their award is to embrace a distinct decision upon each of them, viz.:

1. What exclusive jurisdiction in the sea now known as the Behring Sea, and what exclusive rights in the seal fish-

eries therein, did Russia assert and exercise prior and up to the time of the cession of Alaska to the United States?

2. How far were these claims of jurisdiction, as to the seal fisheries, recognized and conceded by Great Britain?

3. Was the body of water now known as the Behring Sea included in the phrase "Pacific Ocean," as used in the treaty of 1825 between Great Britain and Russia, and what rights, if any, in the Behring Sea were held and exclusively exercised by Russia after said treaty?

4. Did not all the rights of Russia as to jurisdiction and as to the seal fisheries in Behring Sea east of the water boundary, in the treaty between the United States and Russia of the 30th March, 1867, pass unimpaired to the United States under that treaty?

5. Has the United States any right, and if so, what right, of protection or property in the fur seals frequenting the islands of the United States in Behring Sea, when such seals are found outside the ordinary three mile limit?

Should the determination of the foregoing questions as to the exclusive jurisdiction of the United States leave the subject in such position that the concurrence of Great Britain is necessary to the establishment of regulations for the proper protection and preservation of the fur seal in Behring Sea, the arbitrators are to determine what regulations outside the jurisdictional limits of the respective governments are necessary, and over what waters such regulations should extend. Great Britain and the United States have agreed to co-operate in securing the adhesion of other Powers to such regulations, and they have engaged to consider the result of the proceedings

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of the Tribunal of Arbitration as a "full, perfect and final settlement of all the questions referred to the arbitrators."

In 1886, three Canadian schooners, while engaged in the capture of seals in the open sea out of sight of land, were seized by a United States revenue cutter for alleged contravention of United States laws, were taken to a port in Alaska, and were subsequently condemned by proceedings in the United States Court for that district. The captains and mates of the vessels were fined and imprisoned.

Diplomatic correspondence immediately ensued; the people of Canada were greatly excited, and as other seizures were made in subsequent years, it looked at one time as if there might be an outbreak between Great Britain and the United States. It is by no means clear that the seizures were in the first instance directly authorized by the United States Government, but as they were made by United States revenue cutters, that Government had to assume the responsibility, and they have never officially repudiated it. On the contrary, they have attempted to justify it on various grounds. They claimed that Behring Sea is *mare clausum*, and as such is subject to the territorial jurisdiction of the United States; they claimed that Russia, of right, exercised jurisdiction over it, and that by the transfer of Alaska to the United States this jurisdiction also passed. Later on they claimed that as the seals visited the islands belonging to the United States regularly every year, and raised their young there, they were to be regarded as the property of the United States wherever found, and that whatever was necessary for their protection in the open sea was justifiable. The claim that the sea was *mare clausum* does not appear to have been seriously insisted on. But it has never been formally abandoned. The claim as to Russia's jurisdiction prior to the cession of

Alaska has been stoutly maintained, and although the claim as to the property in the seals was not made till a late period, and although it is without precedent to support it—yet counsel for the United States spent hours before the arbitrators in attempting to uphold this claim.

A glance at the map, and a statement of distances, should be sufficient to show the absurdity of the first contention.

The distance from the most western island belonging to the United States to the nearest point on the Asiatic shore is over 300 miles, and from the same island to the nearest Russian island it is over 180 miles. The sea from east to west measures 1100 miles, and from north to south 800 miles. Behring Straits, which form a passage way to the Arctic Ocean, are 36 miles wide at the narrowest part. The sea is not wholly enclosed by the territory of any one nation, nor was it when Russia owned Alaska. The name is of comparatively recent origin. The waters now known as Behring Sea were rarely, if ever, called by that name in the earlier part of the century. They formed part of the Pacific Ocean or South Sea. Much more can be said in favor of the contention as to Russia's jurisdiction, but the evidence in support of it falls far short of the jurisdiction now claimed by the United States, and in view of the attitude of that country towards Russia in 1822, as explained below, the inconsistency of the present position needs no comment. In 1822, His Imperial Majesty, the autocrat of all the Russias, for the avowed reason that "the trade of our subjects on the Aleutian Islands, and on the north-west coast of America appertaining unto Russia, is subject, because of secret and illicit traffic, to oppression and impediments," issued an edict establishing regulations, which declared that "the pursuits of commerce, whaling, and fishing, and of all other industry on all islands, ports, gulfs, including the

whole of the north-west coast of America, beginning from Behring Strait to the 51st degree of northern latitude, also from the Aleutian Islands to the eastern coast of Siberia, as well as along the Kurile Islands, from Behring Strait to the south cape of the island of Urup, viz., to 45° 50' northern latitude, are exclusively granted to Russian subjects.

"It is therefore prohibited to all foreign vessels, not only to land on the coasts and islands belonging to Russia, as stated above, but also to approach them within less than one hundred Italian miles. The transgressor's vessel is subject to confiscation along with the whole cargo."

When this regulation was brought to the notice of the President of the United States, his then Secretary of State, John Quincy Adams, addressed to the Russian Minister at Washington, by direction of the President, a communication stating that the President had "seen with surprise in this edict the assertion of a territorial claim on the part of Russia," to the Territory referred to, and that "to exclude vessels of our citizens from the shore beyond the ordinary distance to which the territorial jurisdiction extends, has exerted still greater surprise," and Mr. Adams asked for "explanations of the grounds of right, upon principles generally recognized by the laws and usages of nations, which can warrant the claims and regulations contained in it."

The Russian Minister replied that the measure was exclusively directed against the culpable enterprises of foreign adventurers, who, not content with exercising upon the coasts referred to an illicit trade prejudicial to the rights reserved to the Russian American Company, took upon themselves to furnish arms and ammunition to the natives in the Russian possessions, exciting them to revolt. The Minister alluded to the extent of the Russian possessions in the Pacific Ocean, and added, "the extent of sea

of which these possessions form the limits, comprehends all the conditions which are ordinarily attached to shut seas (*mers fermées*) and the Russian Government might consequently judge itself authorized to exercise upon this sea the right of sovereignty, and especially that of entirely interdicting the entrance of foreigners, but it preferred only asserting its essential rights without taking any advantage of localities."

Mr. Adams replied, claiming for the citizens of the Union the right to remain unmolested in the prosecution of their lawful commerce, and protesting against giving effect to "an interdiction manifestly incompatible with their rights." In his letter he uses the following language: "From the period of the existence of the United States as an independent nation, their vessels have freely navigated those seas, and the right to navigate them is a part of that independence."

In a subsequent letter on the subject to the United States Minister at St. Petersburg, Mr. Adams says: "The United States can admit no part of these claims; their right of navigation and of fishing is perfect, and has been in constant exercise from the earliest times, after the peace of 1783, throughout the whole extent of the Southern Ocean, subject only to the ordinary exceptions and exclusions of the territorial jurisdictions."

The result of this correspondence was the negotiation of a treaty between Russia and the United States respecting certain rights in certain parts of "the great ocean commonly called the Pacific Ocean or South Sea." In the negotiation the United States stoutly upheld the rights claimed by Mr. Adams, and as stoutly protested against those claimed by Russia.

At one of the conferences the United States plenipotentiary submitted to that of Russia a paper in which he claimed that the sea in question was a free sea, and that "the right of navigating all the free seas belongs by

natural law to every independent nation, and even constitutes an essential part of this independence."

"The United States have exercised navigation in the seas, and commerce upon the coasts above mentioned, from the time of their independence, and they have a perfect right to this navigation and to this commerce, and they can only be deprived of it by their own act, or by a convention."

On another occasion the United States Minister used the following language: "The existence of territorial rights to the distance of 100 miles from the coast, and the prohibition of approaching to the same distance from these coasts, and from those of all intervening islands, are innovations on the law of nations, and measures unexampled."

The treaty referred to was signed in April, 1824, and, for a time, put an end to disputes between the nations respecting Behring Sea. One of its articles was limited to the period of ten years; a difference of opinion as to the true meaning and effect of this article arose after the expiry of the period named, and some correspondence ensued on the subject. Mutual forbearance, however, obviated any serious conflict between the nations, and, with the exception of an occasional interference with the free navigation and right of fishing in Behring Sea, nothing more happened which called upon the United States Government to re-assert its rights in the vigorous manner of Mr. Adams in 1822.

The general impression is that the territorial jurisdiction of a nation extends but one marine league (three miles) from the sea coast, and eminent writers have assumed that such is the law of nations. The reason assigned by the earlier authorities is that a marine league is the distance of a cannon shot, and that a nation has the right to control so much of the sea as can be protected from its shore. The rule, however, did not universally hold good, and in many cases by cus-

tom or treaty the right of a nation to control a greater distance has been recognized, but no instance ever existed which could, by any kind of analogy or reasoning, be cited as a justification for the pretensions of Russia, or as an answer to the position taken by the United States in 1822. If the law relating to the subject be founded upon the principle suggested, viz., the right to control so much of the sea as can be protected from the shore, it is worthy of consideration whether the increased range of the guns of modern warfare does not enable a nation to extend its territorial limits beyond a marine league from the shore. This question has not yet been decided by the nations, but Phillimore, an eminent writer on International law, says, "the great improvements recently effected in artillery seem to make it desirable that this distance should be increased, but it must be so by the general consent of nations, or by specific treaty with particular states." Vattel says: "Powers extend their dominion over the sea as far as they can protect their rights—it is of importance to the safety and welfare of the State that it should not be free to all the world to come so near its possessions." Hautefeuille alleges that "the limit of territorial sea is fixed by the principle from which its territorial character arises, as far as it can be commanded from shore." Bowyer concludes that "between nation and nation all that can reasonably be said is that in general the dominion of the State over the neighboring sea extends as far as her safety renders it necessary and her power is able to assert it."

A writer in an American newspaper thus graphically sums up the situation:—"The claim of Russia to sovereignty over the Pacific ocean north of the 51st degree of latitude, as a closed sea, was considered by our Government in 1822 as being against the rights of other nations, but now, as we have bought Russia out, it is all right.

One's opinions change according to one's standpoint, and besides, cannons shoot farther now than they used to." After the spirited remonstrance against Russian pretensions with respect to Behring Sea in 1822, one would have thought that the United States would not in 1886 have taken an opposite position with respect to the very same sea.

What rights did the United States acquire from Russia? The treaty of cession of the Russian possessions in North America to the United States was concluded, ratified and proclaimed in 1867, and, for the consideration of \$7,200,000, His Majesty, the Emperor of all the Russias, ceded to the United States "all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth." The limits referred to do not pretend to include the whole of Behring Sea.

The Alaska Commercial Company held from the United States Government the exclusive privilege from 1870 to 1890 of taking fur seals in certain parts of Behring Sea. The avowed reason on the part of Russia, that the Edict of 1822, excluding foreign vessels from approaching within one hundred miles of the coast, was exclusively directed against the culpable enterprises of adventurers who carried on an illicit trade with the natives, was clearly not the only or chief reason for her action at that time. *The Russian-American Company* then held from Russia the exclusive right of taking seals in the locality in question. This company was a powerful organization and possessed great influence at court, and there is little doubt that the seizure of the Canadian vessels in 1886 was brought about by similar influences to those which led to the passage of the Russian Edict of 1882, viz., by the action of a great company whose interests were being interfered with by foreign competition. This

probably was the moving cause in both instances.

But for the great value of the seal industry, it is not likely that any difficulties respecting the international jurisdiction would have arisen, and although the course pursued by the United States in seizing Canadian vessels in open sea and out of sight of land, cannot be approved or justified, yet in view of the great importance of preventing the indiscriminate slaughter of seals, and the consequent destruction of this great industry, and in view of the fact that the result will unquestionably prove beneficial to the world, even a Canadian cannot suppress the thought, "All's well that ends well."

Nations are hard to move, and some such event as the seizure by one, of the vessel of another, was probably required to rouse those interested to a proper understanding of the situation, and to the necessity for joint action.

A short account of these marvellous seal fisheries will help to an appreciation of the general position. The seals frequent Behring Sea in great numbers from the middle or towards the end of spring till the middle or end of October, a period of between five and six months. During this time they have rookeries on the Islands of St. Paul and St. George, which constitute the Pribyloff group and belong to the United States, and on the Commander Islands, which belong to Russia. By far the larger number resort to the Pribyloff group. The rest of the year they are supposed to spend in the open sea south of the Aleutian Islands.

The migration northward, is made through numerous passes in the long chain of the Aleutian Islands, above which the courses of their travel converge chiefly to the Pribyloff group. The females generally give birth to their young within two weeks after reaching the rookeries, and soon after they resort to the sea for the food which they require to enable them properly to suckle their young. The

male seals, or bulls, as they are commonly called, require little food while on the islands, where they remain watching the rookeries and sustaining existence on the large amount of blubber which is secreted beneath the skin, and which becomes gradually absorbed during the five or six months. The greater number of seals found in the water during the summer and early fall are females in search of food, but it is impossible there to distinguish females from males.

When shot and killed in the water, a seal generally sinks almost immediately, and great skill and quickness are required on the part of the hunter to reach, with his boat or canoe, the place where the animal was, in time to recover it ere it has sunk too deep. Those who have seen seal shooting on the Lower St. Lawrence will appreciate the difficulty, and will readily believe that large numbers of the animals killed in Behring Sea are lost. One of the special agents of the Treasury Department, in a report to the Secretary of the Treasury at Washington, states his conviction that not more than one seal in ten killed or mortally wounded in the water is landed on the boats and skinned, and he thus estimates that to get the 30,000 skins which were taken in this way in 1887, 300,000 seals were killed.

It is difficult to believe that such an estimate is reliable. Mr. Bayard, writing to Mr. Phelps, in February, 1888, says that some authorities state that not more than one out of three of seals so slaughtered is ever secured, and he adds, "this may, however, be an over estimate of the number lost." Whatever the true proportion may be, it is evident that if indiscriminate destruction of seals in the water by firearms or other similar means be permitted, the result may ultimately be disastrous to the enterprise, and, in any event, large numbers must be slaughtered which are lost entirely, and large numbers of females, some bearing young, must also be killed.

In the letter already referred to, Mr. Phelps refers to the result in other parts of the world, where, in the absence of concerted action among the nations for its preservation, the fur seal industry has ceased, *e.g.*, among the South Pacific Islands and on the coasts of Chili and South Africa, the Falkland Islands and adjacent seas. In former years hundreds of thousands of skins were obtained yearly at these places; but, in 1880, according to the best statistics, less than 1,500 skins were taken at the Falkland Islands, and, in 1888, out of an estimated aggregate yield of 185,000 skins from all parts of the globe, over 130,000, or more than two-thirds, were obtained from the rookeries on the American and Russian Islands in Behring Sea.

An estimate has been made of the numbers of breeding seals on the Pribyloff Islands in 1886 and 1887. The sea margin of the various rookeries was measured, and the depth inland from the sea. The number of square feet was thus ascertained, and, allowing one seal for every two square feet, the result was the astounding number of over six millions breeding seals. This does not include the young male seals, which are not allowed by the old bulls to frequent the rookeries, and which are compelled to "haul out" on other parts of the islands; so that the actual number, if the above estimate be at all reliable, must far exceed six millions. Two square feet to a seal certainly seems a very small allowance; but, whatever the proper space may be, it is evident that under any circumstances the numbers frequenting these islands during the summer months must run up well into the millions.

Mr. A. Howard Clark, in response to a request made by the United States Treasury Department, prepared a memorandum as to the fur seal fisheries of the world in 1887. In it he says:—"A few men are still living who participated in the Antarctic seal fisheries years ago. Their stories of the former abundance of fur seals I have

obtained in personal interviews. As to the manner of destruction, there is but one thing to say: an indiscriminate slaughter of old and young, male and female, in a few years results in the breaking up of the largest rookeries, and, as in the case of Massafuera and the Falkland Islands, the injury seems to be a permanent one. As an instance, the South Shetlands were first visited in 1819 when fur seals were very abundant, two vessels in a short time securing full fares. In 1820, thirty vessels hastened to the islands and in a few weeks obtained upwards of 250,000 skins, while thousands of seals were killed and lost. In 1821 and 1822, Weddell says, '320,000 skins were taken. . . . The system of extermination was practised, . . . for whenever a seal reached the beach, of whatever denomination, he was instantly killed and his skin taken; and by this means, at the end of the second year, the animals became nearly extinct. The young, having lost their mothers when only three or four days old, of course died, which at the lowest calculation exceeded 100,000.' In subsequent years, till 1845, these islands were occasionally visited by vessels in search of seal skins, but never after 1822 were many animals found there. About 1845, the Antarctic fur sealing was abandoned."

Mr. Henry W. Elliott, writing from the Smithsonian Institution to Mr. Bayard, uses the following vigorous words: "Open these waters of Behring Sea to unchecked pelagic sealing, then a fleet of hundreds of vessels, steamers, ships, schooners and what not, would immediately venture into them, bent upon the most vigorous and indiscriminate slaughter of these animals. A few seasons there of the greediest rapine, then nothing left of those wonderful and valuable interests of the public, which are now so handsomely embodied on the seal islands."

The old bulls drive away the young males from the rookeries and they are compelled to "haul out" on other

parts of the Islands. They are driven inland by the hunters and killed by clubbing when a convenient distance from the salting houses. Experience has shown that the fur of a seal is most valuable when the animal is three years old, the proportions being, at present prices, that a two year old seal is worth \$15 or \$16, a three year old \$16 to \$19, a four year old \$16, and a five year old only \$2.50.

When killing the seals on land, care is taken to select as many as possible within the ages of two and four. The seals walk as if on four legs, raising their bodies from the ground as they move. Under favorable conditions they travel about a mile and a half an hour: the longest drive made does not exceed eight miles.

According to the report of Committee of Congress in 1889, the total amount paid by the Alaska Commercial Company under their contract with the government up to June 30, 1888, was.....\$5,597,100

The total amount received from customs' duties on Alaska dressed seal skins imported from England (where the raw skins are for the most part sent to be dressed) was..... 3,426,000

To which should be added the customs' duties on seal skins taken by the Company on islands belonging to Russia..... 502,000

Grand total.....\$9,525,100

The amount paid by the United States to Russia in 1867 for Alaska was...\$7,200,000

The total amount expended up to June, 1888, for salaries, travelling expenses of agents of the Treasury Department in Alaska, was about..... 250,000

And for the expenses of the
revenue cutters cruising
in Alaskan waters about 150,000

Total..... \$7,600,000

Deduct this from the \$9,525,100, and the handsome surplus of \$1,925,100 remains. The \$250,000 and \$150,000 above mentioned seem to include all expenditure by the Government in connection with Alaska from 1867 to 1888. The receipts have been almost entirely directly connected with the seal industry.

No wonder that a vigorous effort should be made to prevent any course which might threaten the destruction of this industry.

A difficulty in the way of a joint arrangement among the nations inter-

ested for the preservation of the seal fisheries, is doubtless the fact that the nations owning the seal islands have so great an advantage. Those who have to seek the seals in open sea cannot readily distinguish males from females, or old from young, and cannot fail to kill, if fire-arms be used, large numbers which are entirely lost. Moreover, it is comparatively easy to check the take of those who kill on land, but not so easy to watch or check the work of a sealing vessel.

Let us hope that some way out of the difficulties may be found, and that the great object in view may not be sacrificed by any narrow-minded, short-sighted or selfish considerations on the part of any.

Toronto, May, 1893.

